Supreme Court, U. S.
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No.

In the Supreme Court of the United States

OCTOBER TERM, 1974

74-75

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

ELIZABETH JANE HALL

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ROBERT H. BORK,
Solicitor General,

SCOTT P. CRAMPTON,
Assistant Attorney General,

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Washington, D.C. 20530.

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ELIZABETH JANE HALL

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States of America and the District Director of Internal Revenue for the District of Kentucky, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion and order of the district court (Appendix A, *infra*, pp. 1a-6a) are not reported. The opinion of the court of appeals (Appendix B, *infra*, pp. 7a-10a) is reported at 493 F.2d 1211.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1974 (Appendix C, *infra*, pp. 11a-12a). By order dated May 31, 1974, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including August 9, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Anti-Injunction Act (Section 7421(a) of the Internal Revenue Code of 1954) bars a suit by any person to restrain the assessment or collection of any tax. The provision contains an exception for cases where the Commissioner is required to issue a notice of deficiency under Section 6212(a).

The question presented is whether the Commissioner may terminate a taxpayer's taxable year under Section 6851 of the Code and assess the taxes due for the terminated period without issuing a notice of deficiency under Section 6212(a), so that a suit to enjoin the Commissioner's assessment and collection of taxes would be barred under the Anti-Injunction Act.

STATUTES INVOLVED

The pertinent provisions of Sections 6201, 6211, 6212, 6213, 6331, 6332, 6335, 6511, 6532, 6851, 6861, 6863, 7421, and 7422 of the Internal Revenue Code of 1954 are set forth at Appendix D, *infra*, pp. 13a-28a.

STATEMENT

On February 1, 1973, the District Director of Internal Revenue for the District of Kentucky notified respondent by letter that he found her to be involved in illicit drug activities tending to prejudice or render ineffectual the collection of income tax for the period January 1, 1973 through January 30, 1973. Pursuant to his authority under Section 6851 of the Internal Revenue Code of 1954, he declared her taxable period commencing January 1, 1973, to be terminated as of January 31, 1973, and the income tax for that period to be immediately due and payable. He further stated that the amount of tax owed for the terminated period was $52,680.25, and would be assessed immediately (Appendix A, *infra*, p. 1a; Appendix B, *infra*, p. 8a).

Respondent was unable to pay the tax. Pursuant to its authority under Section 6331 of the Code, the Internal Revenue Service thereupon levied on all of her property, which included her automobile and her bank account. The bank paid the balance of the account over to the Internal Revenue Service which proceeded to receive bids on respondent's automobile (Appendix A, *infra*, p. 1a; Appendix B, *infra*, p. 8a).

On February 13, 1973, respondent filed a complaint in the United States District Court for the Western District of Kentucky seeking injunctive relief with respect to the assessment against her. The district court granted a preliminary injunction re-

quiring the immediate return of respondent's automobile upon her posting of a bond sufficient to cover its fair market value. The court further barred the Internal Revenue Service from "seizing or levying upon any of her property of whatever nature * * *" (Appendix A, *infra*, pp. 5a-6a). In the district court's view, when the Internal Revenue Service terminates a taxpayer's taxable year under Section 6851 and assesses taxes for the terminated period, it must issue a notice of deficiency under Section 6212(a). Because the Internal Revenue Service did not issue such a notice of deficiency to respondent, the district court held that the bar of the Anti-Injunction Act (Section 7421(a) of the Code) against suits to restrain the assessment and collection of taxes was not applicable (Appendix A, *infra*, pp. 1a-4a).

The court of appeals affirmed (Appendix B, *infra*, pp. 7a-10a). Invoking its earlier decision in *Rambo* v. *United States*, 492 F.2d 1060 (C.A. 6), petition for a writ of certiorari pending, No. 73-2005, the court of appeals concluded that "*Rambo* is decisive of all the legal questions involved in our case and we will follow it" (Appendix B, *infra*, p. 9a).

REASONS FOR GRANTING THE WRIT

This case presents the identical issue as *United States* v. *Rambo*, 492 F.2d 1060 (C.A. 6), petition for a writ of certiorari pending, No. 73-2005; and *Laing* v. *United States*, 364 F.Supp. 469 (D. Vt.),

affirmed, May 2, 1974 (C.A. 2), petition for a writ of certiorari pending, No. 73-1808.[1]

1. The court of appeals, relying upon its prior decision in *United States* v. *Rambo*, *supra*, affirmed the district court's issuance of an injunction against the Internal Revenue Service's collection efforts pursuant to an assessment issued against respondent. In so holding, the decision below is in direct conflict with *Irving* v. *Gray*, 479 F.2d 20 (C.A. 2), and *Laing* v. *United States*, *supra*. In those two cases, the Second Circuit has held that a similar action to enjoin the seizure of property by the Internal Revenue Service pursuant to its termination of a taxpayer's taxable year under Section 6851 of the Code is barred by Section 7421(a), commonly referred to as the Anti-Injunction Act.[2] That Act prohibits a "suit for the purpose of restraining the assessment or collection of any tax * * * in any court by any person * * *." The decision also conflicts with that of the Seventh Circuit in *Williamson* v. *United States*, 31 A.F.T.R. 2d 73-800 (unreported order of April 8, 1971), which also concluded, in the context of a suit for refund of taxes collected pursuant to a Section 6851 termination of a taxable year, that such

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[1] The government has acquiesced in the granting of the petition in *Laing*.

[2] Last Term, this Court upheld the bar of the Anti-Injunction Act in two cases involving attempts to obtain equitable relief in connection with tax-exempt status. See *Bob Jones University* v. *Simon*, No. 72-1470, and *Alexander* v. *"Americans United", Inc.*, No. 72-1371, both decided May 15, 1974.

a termination does not require the issuance of a notice of deficiency. Resolution of the conflict by this Court is important to the administration of the federal tax laws.[3]

2. For the reasons stated in our petition for a writ of certiorari in *Rambo*, a copy of which we are furnishing to respondent's counsel, the decision below rests upon the erroneous initial premise that the Commissioner is required to issue a notice of deficiency under Section 6212(a) to a taxpayer whose taxable year is terminated under Section 6851. Thus, his failure to do so does not trigger the application of the prefatory exception phrase of the Anti-Injunction Act—"Except as otherwise provided in Sections 6212(a) and (c), [and] 6213(a) * * *." The court below accordingly erred in holding that the district court had jurisdiction to enjoin the Internal Revenue Service's collection efforts.

[3] At present there are more than 70 cases pending in the federal courts involving this question and it is expected that the number of cases will continue to increase. We have been advised by the Internal Revenue Service that for the fiscal year 1972, it terminated the taxable years of more than 600 taxpayers and correspondingly assessed taxes in excess of $30 million. For the fiscal year 1973, more than 1800 taxable years were terminated with assessments in excess of $60 million.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be held pending this Court's ultimate disposition of the *Rambo* and *Laing* cases.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

STUART A. SMITH,
Assistant to the Solicitor General.

AUGUST 1974.

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 7571-G

ELIZABETH JANE HALL

vs.

UNITED STATES OF AMERICA, THOMAS P. McHUGH, ELMER SNYDER and DONALD POWERS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION

[Entered March 9, 1973]

This action came before this Court on plaintiff's motion for a preliminary injunction. Following a seizure by state police of alleged dangerous drugs on her premises, Internal Revenue Service agents assessed plaintiff with a tax bill of $52,680.25. When she said she was unable to pay, the Internal Revenue Service attached all of her property, including her bank account and her car. The Internal Revenue Service then sent plaintiff a certified letter stating that they would soon sell the car, pursuant to the authority vested in them by Section 6851 of the Internal Revenue Code.

In deciding to issue a preliminary injunction, this Court relies on *Schreck* v. *United States*, 301 F.

Supp. 1265 (D.C. Md. 1969), and *Rambo* v. *United States*, (C.A. No. 7370-A, U.S. Dist. Court for the Western Dist. of Ky. at Louisville).

The Court in the *Schreck* case ruled that the proper construction of 26 U.S.C. §§ 6851, 6861 and 6213(a) requires that the government send a deficiency notice to the taxpayer respecting the shortened tax year and that the government's failure to do so entitles the taxpayer to obtain injunctive relief in the district court pursuant to Section 6218(a). This interpretation was adopted by Judge Allen, in *Rambo* (supra), who agreed with Judge Kaufman's opinion in *Schreck* "that 26 U.S.C. § 6851 contained no assessment provisions within its bounds", and that in a Section 6851 short year case, the taxpayer is entitled to the protections afforded by Section 6861. Those provisions, as set out in *Rambo* are as follows:

1. The IRS is required to send a deficiency notice within 60 days after the assessment, thus enabling the jeopardy taxpayer to litigate in the Tax Court. Section 6861(b). If the IRS does not comply with this requirement, the assessment and levy or seizure may be enjoined by the federal courts. Section 6213(a), *United States* v. *Ball*, 326 F. 2d 898 (4th Cir., 1964).
2. The jeopardy taxpayer can stay all collection action pending the Tax Court's decision if he is able to post an adequate bond. Section 6863 (a).

3. The property seized pursuant to the assessment may not, in general, be sold during the pendency of the litigation in the Tax Court. Section 6863(b) (3) A.
4. IRS may abate the jeopardy assessment if it finds that jeopardy does not exist. Section 6861(g).

But, these safeguards may not afford any substantial protection to the taxpayer, where, as in the instant case, the assessment was far in excess of plaintiff's assets. Where the property of taxpayer was subjected to a federal tax lien, as here, the right to file a bond is without meaning to plaintiff and cannot be accomplished. And unless the value of the seized property is as great as the assessment, the taxpayer is barred from filing a refund suit in the district court under the full-payment rule of *Flora* v. *United States*, 362 U.S. 145 (1960). The value of plaintiff's property was not as great as the assessment in this case, and therefore, she was precluded from filing a refund suit. She has, in fact, been denied any remedy at all.

And finally, as pointed out in *Schreck* at page 1281, "if the Court were to hold that IRS has the right to seize and sell all of a person's property with no corresponding right to the taxpayer to institute any court proceeding, for perhaps longer than three years, in which to litigate the validity of the underlying assessment and seizure, while all jeopardy income taxpayers other than short-year jeopardy in-

come taxpayers have the right to begin a judicial proceeding within sixty days of the assessment, it would raise serious constitutional questions of equal protection and due process."

The Court orders that plaintiff's car be returned to her possession upon her posting a bond in the amount of its fair market value. It is ordered that a preliminary injunction be issued. This preliminary injunction is a final and appealable order. This order extends only to enjoining defendants from harassing or intimidating plaintiff or from levying upon or selling any of her property prior to a resolution of the legal issues involved by the 6th Circuit Court of Appeals. All other issues raised by the pleadings are reserved for later rulings by this court.

March 9th, 1973

/s/ James F. Gordon
JAMES F. GORDON
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 7571-G

ELIZABETH JANE HALL
vs.
UNITED STATES OF AMERICA, THOMAS P. MCHUGH, ELMER SNYDER and DONALD POWERS

[Entered March 9, 1973]

PRELIMINARY INJUNCTION

The Court, having entered its findings of fact, conclusion of law and opinion, and being fully advised in the premises,

IT IS HEREBY ORDERED that defendants United States of America, Thomas P. McHugh, Elmer Snyder, Donald Powers, their agents, servants, employees and attorneys, and all persons in active concert and participation with them, be and they hereby are enjoined from in any manner, either directly or indirectly, selling plaintiff's automobile or any of her property and from harassing or intimidating plaintiff in any manner including but not limited to trespassing on, seizing or levying upon any of her property of whatever nature, be it rental property or not.

IT IS HEREBY ORDERED that defendants United States of America and Thomas P. McHugh,

Acting District Director of Internal Revenue for the District of Kentucky, their agents, servants, employees and all others acting in concert with them or on their behalf return to the plaintiff Elizabeth Jane Hall, her 1970 Volkswagon automobile, Identification Number 360 207 2167, Model Number 3611, Body Style 25, bearing current Jefferson County Kentucky license plate numbered J19-797 upon posting by the plaintiff a bond sufficient to cover the fair market value of the automobile.

It is further expressed that it is not the intention of the Court by this Preliminary Injunction to in any way restrict Lt. Donald Powers of the Kentucky State Police in the lawful performance of his duties as a law enforcement officer, except as to the matters specifically dealt with in the two preceding paragraphs.

IT IS HEREBY ORDERED that this Preliminary Injunction take effect immediately. This Preliminary Injunction is a final and appealable order.

March 7, 1973.

/s/ James F. Gordon
JAMES F. GORDON
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 73-1614

ELIZABETH JANE HALL, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, THOMAS P. MCHUGH and ELMER SNYDER, DEFENDANTS-APPELLANTS

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Decided and Filed March 12, 1974

Before WEICK, EDWARDS and LIVELY, Circuit Judges

PER CURIAM. This appeal is from a preliminary injunction granted by the District Court, restraining the sale of taxpayer's automobile and the collection of a jeopardy assessment made without any notice of deficiency, which assessment is alleged to be invalid because it compelled taxpayer to pay the tax without affording her a remedy in the Tax Court to determine its validity.

The Director of Internal Revenue Service wrote to the taxpayer on February 1, 1973, stating that he found her involved in illicit drug activities tending to prejudice or render ineffectual the collection of income tax for the period January 1, 1973 through January 30, 1973. Accordingly, under the authority of Section 6851 of the Internal Revenue Code, he declared her taxable period commencing January 1, 1973, terminated as of January 31, 1973, and the income tax for such period to be immediately due and payable. He further stated that the tax for said period in the amount of $52,680.25, would be assessed immediately and he made demand for the payment thereof.

The fact is that the tax was assessed on February 1, 1973. The Director did not furnish to taxpayer any documents or papers to indicate how or in what manner the tax was computed.

Except for such short-term termination, taxpayer's income tax return would not have been required to be filed until April 15, 1974.

Taxpayer was unable to pay the tax and Internal Revenue Service then levied on all of her property, which included her Volkswagen automobile and her bank account. The bank paid the money out of the account to Internal Revenue Service. Internal Revenue Service proceeded to take bids on taxpayer's automobile.

Taxpayer then instituted the present action in the District Court, which granted a temporary restrain-

ing order and then a preliminary injunction, from which the Service has appealed.

In granting the injunction the Distirct Court relied on *Rambo* v. *United States*, 353 F.Supp. 1021 (W.D.Ky. 1972) and *Schreck* v. *United States*, 301 F.Supp. 1265 (D.Md. 1969).

The facts in *Rambo* are similar to the facts in the case at bar. This Court has since affirmed *Rambo*. *Rambo* v. *United States*, —— F.2d —— (6th Cir. Nos. 73-1131, 73-1413, 1974). *Rambo* is decisive of all the legal questions involved in our case and we will follow it.

In the opinion in *Rambo*, written for the Court by Circuit Judge William E. Miller, it was pointed out that normally the taxpayer would have no recourse to restrain the collection of an invalid tax because of the provisions of Section 7421(a). Taxpayer's only remedy would be to pay the tax, file her return, and then sue for a refund.

We rejected the contention of I.R.S. that the assessment was made under Section 6201 because the authority for assessing such a tax was derived from the provisions of Section 6861, not 6201. Section 6861 provides for the assessment of a deficiency and demand for payment. A deficiency notice to taxpayer must be given within sixty days after the assessment. No such notice was ever given to taxpayer. Had such determination been made and the deficiency notice given, taxpayer could have resorted to the Tax Court for determination of the validity of the tax.

It is very important to a taxpayer, particularly to one who does not have $52,000, that she have a right to litigate the validity of the tax before her property is levied upon and sold to pay the tax. The Tax Court of the United States was established for the very purpose of providing such a remedy for taxpayers. Because of the failure of I.R.S. to determine a deficiency and to give sixty days' notice to taxpayer, as the law required, I.R.S. has prevented plaintiff from availing herself of the remedy in the Tax Court. Her only remedy, therefore, was to file the injunction suit in the District Court.

Affirmed.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed Mar. 12, 1974, James A. Higgins, Clerk]

[Filed Apr. 5, 1974, U. S. District Court, Western Dist. Kentucky, August Winkenhofer, Jr., Clerk]

No. 73-1614

ELIZABETH JANE HALL, PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Before: WEICK, EDWARDS and LIVELY, Circuit Judges

JUDGMENT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Kentucky and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Plaintiff-Appellee recover from Defendant-Appellant, the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

ENTERED BY ORDER OF
THE COURT

/s/ James A. Higgins
Clerk

A True Copy.
Attest:

/s/ John P. Hehman
JOHN P. HEHMAN
Clerk

Issued as Mandate: April 2, 1974

APPENDIX D

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6201. ASSESSMENT AUTHORITY.

(a) Authority of Secretary or Delegate.—The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing and under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return.—The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp.—

(A) Omitted stamps.—Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor

upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) Check or money order not duly paid. —In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits.—If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) [as amended by Sec. 2(b), Act of August 7, 1969, P.L. 91-53, 83 Stat. 91] Amount Not To Be Assessed.—

(1) Estimated income tax.—No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

• • • •

(d) [as amended by Sec. 101(j)(38), Tax Reform Act of 1969, P.L. 91-172, 83 Stat. 487] Deficiency Proceedings.—

For special rules applicable to deficiencies of income, estate, gift, and chapter 42 taxes, see subchapter B.

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) [as amended by Sec. 101(f), Tax Reform Act of 1969, *supra*] In General.—For purposes of this title in the case of income, estate, gift, and excise taxes, imposed by subtitles A and B, and chapter 42, the term "deficiency" means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

• • • •

SEC. 6212. NOTICE OF DEFICIENCY.

(a) [as amended by Sec. 89(b), Technical Amendments Act of 1958, P.L. 85-866, 72 Stat. 1606, and Sec. 101(j)(40), Tax Reform Act of 1969, *supra*] In General.—If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 42, he is au-

thorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

* * * *

(c) Further Deficiency Letters Restricted.—

(1) [as amended by Sec. 101(f), Tax Reform Act of 1969, *supra*, and Sec. 102(d), Excise, Estate and Gift Tax Adjustment Act of 1970, P.L. 91-614, 84 Stat. 1836] General rule.—If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar quarter, of estate tax in respect of the taxable estate of the same decedent, of section 4940 tax for the same taxable year, or of chapter 42 tax (other than under section 4940) with respect to any act (or failure to act) to which such petition relates except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assessments).

* * * *

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) [as amended by Sec. 101(j)(42), Tax Reform Act of 1969, *supra*] Time for Filing Petition and Restriction on Assessment.—Within 90 days, or 150

days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * *

§ 6331. Levy and distraint.

(a) Authority of Secretary or delegate.

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to

property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property.

The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible). • • •

§ 6332. Surrender of property subject to levy.

(a) Requirement.

Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to

levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process. • • •

§ 6335. Sale of seized property.

(a) Notice of seizure.

As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale.

The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or

if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331 (a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

* * * *

§ 6511. Limitations on credit or refund.

(a) Period of limitation on filing claim.

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

* * * *

§ 6532. Periods of limitation on suits.

(a) Suits by taxpayers for refund.

(1) General rule.

No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

* * * *

SEC. 6851. TERMINATION OF TAXABLE YEAR.

(a) Income Tax in Jeopardy.—

(1) In general.—If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment

of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

* * * *

(b) Reopening of Taxable Period.—Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonresident alien the

taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

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SEC. 6861. JEOPARDY ASSESSMENTS OF INCOME, ESTATE, AND GIFT TAXES.

(a) Authority for Making.—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) Deficiency Letters.—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

* * * *

(g) Abatement if jeopardy does not exist.

The Secretary or his delegate may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a

decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

§ 6863. Stay of collection of jeopardy assessments.

(a) Bond to stay collection.

When a jeopardy assessment has been made under section 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary or his delegate, within such time as may be fixed by regulations prescribed by the Secretary or his delegate, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with the interest thereon) the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by

the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Further conditions in case of income, estate, or gift taxes.

In the case of taxes subject to the jurisdiction of the Tax Court—

(1) Prior to petition to Tax Court.

If the bond is given before the taxpayer has filed his petition under section 6213(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) Effect of Tax Court decision.

The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) Stay of sale of seized property pending Tax Court decision.

(A) General rule.

Where, notwithstanding the provisions of section 6213(a), a jeopardy assessment has been made under section 6861 the property seized for the collection of the tax shall not be sold—

(i) if section 6861(b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 6213(a) for filing petition with the Tax Court, and

(ii) if petition is filed with the Tax Court (whether before or after the making of such jeopardy assessment under section 6861), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if section 6861(a) were not applicable.

(B) Exceptions.

Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary or his delegate determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) Applicability.

Subparagraphs (A) and (B) shall be applicable only with respect to a jeopardy assessment made on or after January 1, 1955, and shall apply with respect to taxes imposed by this title and with respect to taxes imposed by the Internal Revenue Code of 1939.

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] Tax.—Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * *

§ 7422. Civil actions for refund.

(a) No suit prior to filing claim for refund.

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the

regulations of the Secretary or his delegate established in pursuance thereof.

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